

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TANESHA SHORT, n/k/a TANESHA PARKER,  
as Next Friend for IESHA ALLEN, a Minor,

UNPUBLISHED  
March 23, 2006

Plaintiff-Appellee,

v

SUBURBAN MOBILITY AUTHORITY FOR  
REGIONAL TRANSPORTATION, a/k/a  
SMART, and JOSEPH JAUMAAL BROWN,

No. 258451  
Wayne Circuit Court  
LC No. 03-314008-NI

Defendants-Appellants.

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Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff, as next friend for Iesha Allen, a minor, brought this third-party automobile negligence action against defendants, alleging that Allen suffered serious impairment of a body function as a result of a motor vehicle accident caused by defendant Joseph Brown's negligence in operating a SMART<sup>1</sup> bus. We reverse and remand for entry of summary disposition in favor of defendants on the issue of negligence.

I. Facts

Allen, a three year old, was injured in an automobile accident involving a SMART bus at Joy Road and Greenfield Road in Detroit on April 15, 1998, at approximately 8:50 p.m. Allen was a passenger in a car driven by her father, Isaac Allen (Isaac). Brown, the driver of the bus, made a left hand turn from Joy Road onto Greenfield Road in front of Isaac's westbound Joy Road car. Isaac's car struck the rear of the bus behind the rear tandem wheels. Allen was not wearing a seat belt, and she was not riding in a child safety seat. She was thrown against and starred the windshield of Isaac's vehicle.

Allen suffered facial trauma resulting in multiple fractures to her jaw. Her injuries required multiple surgeries including open reduction and internal fixation (ORIF) with bars, a

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<sup>1</sup> SMART is an acronym for Suburban Mobility Authority for Regional Transportation.

permanent plate, and the wiring of her jaw shut. To obtain this treatment she was triaged at Grace Hospital and stabilized. She was thereafter air transported to University of Michigan Hospital (U of M). While at U of M the minor plaintiff suffered respiratory insufficiency requiring endotracheal intubation under general anesthesia. The following day, again under general anesthesia, she underwent bilateral subcondylar fracture reduction with intermaxillary fixation, ORIF of the parasymphiseal fracture with plating, and closure of a complex tongue laceration. The jaw remained wired for four weeks and two weeks later, again under general anesthesia, the arch bars were removed, but the metal plate permanently remains.

There is no dispute that Allen substantially recovered from her initial injuries within six months of the accident. However, her physicians have recommended future monitoring of her, because the condyles sustained severe comminuted fractures, the left condyle remained dislocated after surgery, and long term growth issues abound in connection with the mandible, given the nature of the fractures and the plate in her jaw. Six years post accident, defendants' independent examiner reports an excellent prognosis, but again recommends, "a follow up x-ray in approximately 6-9 months to follow her development and to watch for asymmetrical growth, as she will be moving in to an adolescent growth phase in the next year or so."

Relying on our Supreme Court's decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), defendants moved for summary disposition under MCR 2.116(C)(10), arguing that Allen's injuries did not meet the statutory threshold for "serious impairment of a body function" under MCL 500.3135, because there was no evidence that the injuries affected the course or trajectory of her normal life or that defendant Brown was negligent. Defendants averred that they were entitled to judgment as a matter of law, because there was no factual dispute that Allen had fully recovered from her injuries and had no residual impairment. Plaintiff also moved for summary disposition on the issue of Brown's negligence. The trial court denied the motions for summary disposition. This Court granted defendants' interlocutory application for leave to appeal. Plaintiff took no cross appeal.

## II. Standard of Review

We review de novo a trial court's resolution of a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Id.* at 540; MCR 2.116(C)(10) and (G)(4). In reviewing a motion under MCR 2.116(C)(10), a court must consider the entire record in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Where the burden of proof at trial rests on the nonmoving party, as is the case here, the nonmoving party may not rely on mere allegations or denials in the pleading, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

### III. Negligence

Defendants argued in their summary disposition motion that plaintiff could not present any evidence that defendants were negligent, because it was undisputed that Isaac was speeding and that Brown operated the bus in a reasonable, prudent, and safe manner. Further, they argued, that plaintiff failed to present any evidence that Isaac was already in the intersection or so close as to constitute an immediate hazard. Because Brown had first yielded the right of way to through traffic, he acquired the right of way when he commenced his turn with Isaac being more than a full block away, and Isaac forfeited any right of way he may have enjoyed. Plaintiff simply countered defendants' argument with citation to the right of way statute, MCL 257.612(1)(a), presenting argument without presenting separate evidence for evaluation. Plaintiff further argued that even if Isaac was negligent, his negligence could not be imputed to the minor plaintiff, defendants' evidence of Isaac's misconduct was inadmissible and unfairly prejudicial, and defendants' reconstruction expert did not base his opinion on reliable data.

To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Haliw v Sterling Heights*, 464 Mich 294, 309-310; 627 NW2d 581 (2001). Plaintiff argues that Brown breached a duty and caused the accident by turning left, into the path of Isaac's oncoming vehicle, when Isaac had the right of way. Plaintiff does not offer any documentary proof that Isaac was too close to the intersection for Brown to begin his turn. Instead, plaintiff argues that Brown was per se negligent because he violated MCL 257.612(1)(a), which provides:

If the signal exhibits a green indication, vehicular traffic facing the signal, except when prohibited under section 664, may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

Plaintiff argues that Brown violated this statute by failing to yield to Isaac's vehicle.

Violation of a civil statute, ordinance, rule, or regulation can establish a prima facie case from which the jury can infer negligence. *Johnson v Bobbie's Party Store*, 189 Mich App 652, 661; 473 NW2d 796 (1991). However, the evidence here does not support plaintiff's claim. Brown testified that Isaac's vehicle was sufficiently far away for Brown to complete his turn before Isaac entered the intersection, assuming Isaac had been driving at the posted speed limit. Plaintiff did not offer any testimonial or documentary evidence to contradict Brown's testimony. Accordingly, plaintiff cannot establish a prima facie case of negligence based on MCL 257.612(1)(a).

In addition, two other statutes are germane to the factual determinations of negligence. MCL 257.650(1) provides in pertinent part:

The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to a vehicle approaching from the opposite direction which is within the intersection or so close to the intersection as to constitute an

immediate hazard; but the driver, having so yielded and having given a signal when and as required by this chapter, may make the left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right of way to the vehicle making the left turn.

And MCL 257.649(5) provides:

The driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have under this section.

These two statutes form the better framework for a negligence analysis.

Defendants offered undisputed evidence that Isaac was speeding, and that his excessive speed caused him to arrive at the intersection before Brown could complete his turn. Isaac was also operating a motor vehicle while under the influence of alcohol. Defendants' accident reconstruction expert determined, based on the size, weights, and positions of the vehicles, that Isaac was driving 15 miles an hour above the posted speed limit. Eyewitness testimony placed Isaac's speed significantly higher. In addition, Isaac's vehicle was a full block away when the driver commenced his turn. Photographs showed that Isaac's vehicle collided with the bus behind the rear wheels, indicating that Brown was almost completely through the intersection. This corroborates Brown's judgment that he had enough time to clear the intersection, and would have done so safely, but for Isaac's excessive speed. Additionally, there was no evidence of braking on Isaac's part before the collision. Plaintiff has not produced any evidence to the contrary. A party opposing summary disposition under MCR 2.116(C)(10) may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* Accordingly, plaintiff has failed to establish a genuine factual question to withstand summary disposition on the negligence issue.

Plaintiff argues that Isaac's negligence is irrelevant, because a parent's comparative negligence cannot be imputed to a child. However, because plaintiff has failed to prove any negligence on Brown's part, the question of comparative negligence is not pertinent. As part of plaintiff's relevance argument, she maintains that evidence of Isaac's intoxication and speeding is irrelevant and inadmissible under MRE 401, 402, and 403. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001). Generally, all relevant evidence is admissible, unless otherwise provided by law, and evidence which is not relevant is not admissible. *Id.*; MRE 402. Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Aldrich, supra*; MRE 403. Plaintiff's argument completely lacks merit, because Isaac's speed and intoxication are both highly and directly relevant to the question whether Isaac was driving safely and prudently, and caused the accident in question.

Finally, plaintiff argues that defendants' expert testimony is inadmissible under MRE 702, which provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Plaintiff argues that the reconstruction expert's opinion is not based on reliable facts or data, because he relied on eyewitnesses' estimates of Allen's speed. In fact, the expert determined Allen's speed based on physical evidence, namely the condition of the vehicles and their size and weight.

The record establishes a complete failure of evidence by plaintiff on the proposition of negligence on the part of defendant Brown. All the evidence, evidence from which reasonable minds could not differ, establishes that Isaac's own negligence was the sole and proximate cause of the motor vehicle accident. We reverse and remand for entry of summary disposition in favor of defendants on the issue of negligence.<sup>2</sup>

Reversed and remanded for entry of dismissal consistent with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio

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<sup>2</sup> Because of our determination of the negligence issue, we need not evaluate Allen's significant injuries under *Kreiner, supra*.